

Opinion 73 - 28 March, 1946.  
(Requested by Office of Foreign Affairs)  
Subject: Descent and distributions, Korea, Laws of.

(background). Inquiry was made as to existing Korean laws of descent and distribution, particularly the status in re inheritance of a German woman, married to a Korean, who died intestate, with one surviving daughter, age 8 years.

1. No statutory laws concerning descent and distribution are at present in force in Korea. The law in this field is unwritten and based exclusively on custom.

The Japanese Civil Code deals in Books 4 and 5 with family relations and inheritance law. In contrast to all other provisions of the Japanese Civil Code, Books 4 and 5 were not generally introduced into Korea. Only Japanese residents of Korea were subject to these parts of the Civil Code. Koreans were exempted from these provisions.

2. If a Korean dies intestate and is survived by his widow and a daughter 8 years old, Korean customary law provides that the widow gets the entire estate. No distinction is made between movable and immovable goods. It may be mentioned that Korean customary law recognizes the validity of "wills." No special forms are required for wills.

3. The fact that the widow in the case at bar is of German origin is immaterial. A woman of foreign nationality who married a Korean automatically acquired Japanese citizenship. The Japanese Law on Nationality of March 1899 (amended in 1916 and 1924) provided in Art. 5 that:

"An alien acquires Japanese citizenship in the following cases: 1. By becoming the wife of a Japanese. \*\*\*"

The Japanese Nationality Law was in force in Korea.

Although subjects of the Japanese Empire, Koreans formed a separate nationality of their own. All persons who belong to a Korean "house" and are recorded in a Korean family register are deemed to be Korean nationals. It can be assumed that in the case at bar the deceased Korean registered his wife in the family register. Even if the wife is not registered in the family register of her late husband, Korean customary law controlled the inheritance questions involved. The Japanese Law Concerning the Application of Laws (a codification of Japanese Conflict of Laws) which is in force in Korea, provides, in Art. 24, that succession is governed by the law of the country of the "ancestor." This provision is in accord with generally-recognized principles of private international law, since the word "ancestor" is only a different term for intestate.